

See Attachment

13  
11/24/00  
JP

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JERRY MASON, : CIVIL NO. 1:00-CV-1490  
: :  
Petitioner : (Judge Rambo)  
: :  
v. : (Magistrate Judge Smyser)  
: :  
ROBERT W. MEYERS, :  
Superintendent, :  
: :  
Respondent :

FILED  
HARRISBURG, PA

NOV 22 2000

ORDER

MARY E. D'ANDREA, CLERK  
Per JP Deputy Clerk

On August 21, 2000, the petitioner, a state prisoner proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitioner raises the following claims: 1) actual innocence based upon DNA evidence; 2) ineffective assistance of counsel; 3) conflict of interest of counsel; and 4) failure to conduct investigation or attack legal jurisdiction of this case. By an Order dated October 10, 2000, the respondent was ordered to respond to the petition on or before October 30, 2000.

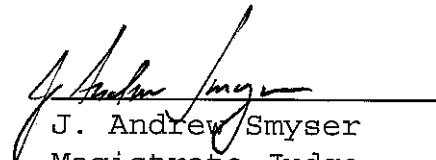
The respondent did not respond to the petition as ordered. By an Order dated November 9, 2000, the respondent was ordered to, within ten days, show cause why a default judgment should not be entered against him and the petition for a writ of habeas corpus be granted and/or other sanctions entered against him based on his failure to obey the Order of October 10, 2000.

On November 14, 2000, the respondent filed a response to the show cause order and a request for an extension of time to file his response to the petition. The respondent states that he has been investigating the status of certain physical evidence in order to determine whether the evidence exists and may be available for testing, that the evidence has not yet been located but that further investigation may be successful in locating the evidence. The respondent's counsel states that he inadvertently let the deadline for filing a response to the petition pass. The respondent requests an unspecified amount of time to locate the evidence and requests that no sanctions be imposed.

On November 20, 2000, the petitioner filed objections to the respondents response to the show cause order and request for an extension of time. The petitioner asserts that the respondent's counsel should have been attempting to locate the evidence since at least August 29, 2000, the date the petitioner's prior counsel sent the respondent's counsel a letter concerning the evidence. The petitioner also asserts that the respondent could have, but did not, request an extension of time to respond to the petition before the response was due. The petitioner requests that the court sanction the respondent for failing to file a timely response to his petition as ordered by the court.

At this point, we will not sanction the respondent or his counsel for failing to timely respond to the petition. We will grant the respondent a brief extension of time to respond to the petition. There does not appear to be any reason why the respondent can not respond to the petition and at the same time continue to attempt to locate the evidence at issue.

AND NOW, this <sup>22<sup>nd</sup></sup> day of November, 2000, IT IS HEREBY  
ORDERED that on or before December 1, 2000, the respondent  
shall respond to the petition in the manner ordered by the  
Order of October 10, 2000.

  
J. Andrew Smyser  
Magistrate Judge

Dated: November 22, 2000.

UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA

\* \* MAILING CERTIFICATE OF CLERK \* \*

November 22, 2000

Re: 1:00-cv-01490 Mason v. Meyers

True and correct copies of the attached were mailed by the clerk  
to the following:

Jerry Mason  
SCI-R  
SCI at Rockview  
BK-6012  
P.O. Box A  
Bellefonte, PA 16823

David W. Lupas, Esq.  
16 Luzerne Avenue  
West Pittston, PA 18643

Frank P. Barletta, Esq.  
District Attorney's Office  
Luzerne County Courthouse  
200 North River Street  
Wilkes-Barre, PA 18711

David W. Lupas  
Luzerne County Courthouse  
Wilkes Barre, PA 18711

cc:

Judge	( )
Magistrate Judge	( )
U.S. Marshal	( )
Probation	( )
U.S. Attorney	( )
Atty. for Deft.	( )
Defendant	( )
Warden	( )
Bureau of Prisons	( )
Ct Reporter	( )
Ctroom Deputy	( )
Orig-Security	( )
Federal Public Defender	( )
Summons Issued	( )

with N/C attached to complt. and served by:  
U.S. Marshal ( ) Pltf's Attorney ( )

Standard Order 93-5 ( )  
Order to Show Cause ( ) with Petition attached & mailed certified mail  
to: US Atty Gen ( ) PA Atty Gen ( )  
DA of County ( ) Respondents ( )  
Bankruptcy Court ( )  
Other \_\_\_\_\_ ( )

MARY E. D'ANDREA, Clerk

DATE: \_\_\_\_\_

11/22/00

BY: \_\_\_\_\_

Deputy Clerk